

Remarks / Arguments

Claims 1 - 10 and 12 - 28 are pending. Claim 11 is to be canceled by this Amendment.

1. Claim Rejection 35 U.S.C. §103

Claims 1 - 7, 10 - 11, 16 - 17, 20, 21, 23 and 25-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kidd in view of Tillotson.

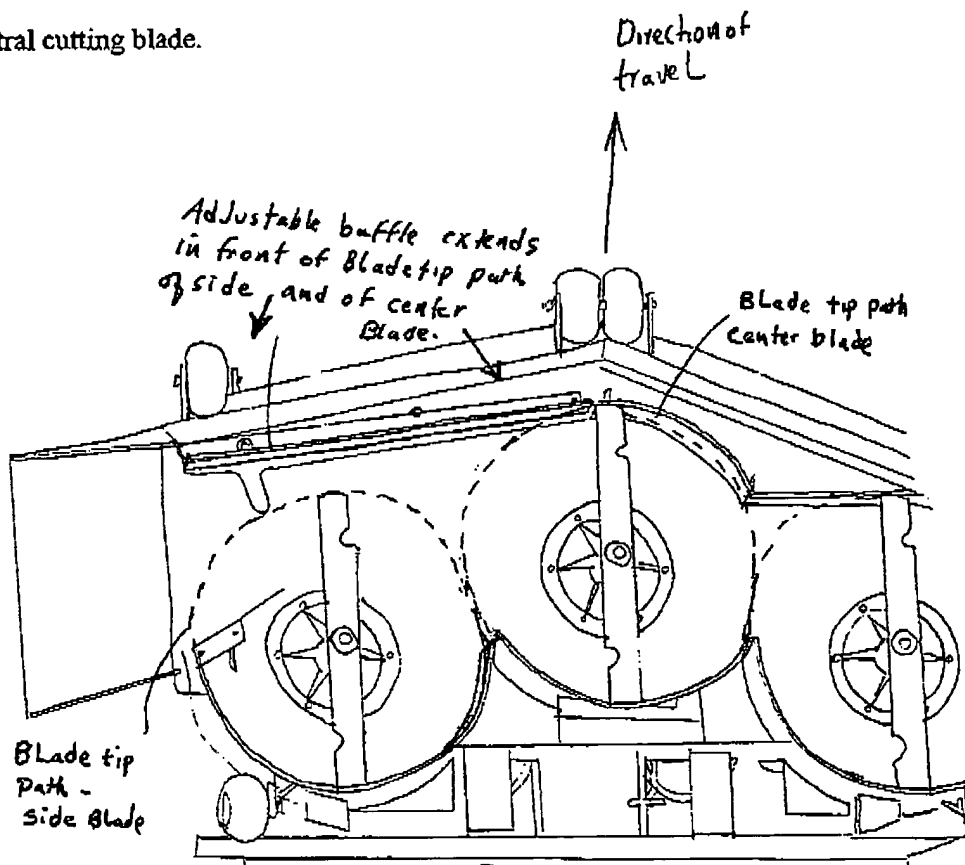
There is no suggestion or genuine motivation to combine the Kidd and Tillotson references. When an obviousness determination is based on multiple prior art references, as is the case here, there must be a showing of some "teaching, suggestion, or reason" to combine the references. The "mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." M.P.E.P. § 2143.01; *See also, In re Mills*, 916 F.2d 680, 682, U.S.P.Q. 2d 1430, 1432 (Fed. Cir. 1990). Finally, although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." *Id.*

The Examiner has merely selected components identified in the various references to end up with Applicant's claimed invention. The obviousness rejection is not based on a motivation provided by the references as required under 35 U.S.C. §103(a), but is instead based on the Examiner's use of hindsight to create an obviousness rejection by selecting art based on knowledge of Applicant's invention.

Furthermore, even if Kidd and Tillotson were properly combinable under Section 103, the combination would fail to yield the invention as present claimed. For example, the combination of Kidd and Tillotson would fail to yield a three-bladed cutting deck having a movable flow

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control baffle which extends in front of the side cutting blade and a portion of the central cutting blade during intended operation. Stated another way, the proposed combination of Kidd and Tillotsen would fail to teach or suggest a movable flow control baffle extending in front of substantially the entire cutting tip path of the side cutting blade and in front of a portion of the central cutting blade.



In comparison, the movable baffle 20 of Tillotsen (which is positioned in front of both cutting blades during forward movement) only extends in front of the blade tip path of a portion of the cutting blades. There is not teaching or suggestion to extend the movable baffle 20 from pivot point 22 all the way across the mower deck to the side discharge chute proximate the adjacent cutting blade. Furthermore, applying the movable baffle of Tillotsen to a deck

according to Kidd, would yield a baffle which extends, at most, across only a single blade tip path. Reconsideration of these claim rejections is requested.

Claims 8-9, 19 and 24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kidd in view of Tillotson and in further view of Foster.

The arguments in favor of patentability of claims 1 – 7, 10 – 11, 16 – 17, 20, 21, 23 and 25-28 also apply to the rejection of these claims. Reconsideration of the rejection of these claims is requested.

Claims 14-15, 18 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kidd in view of Tillotson and in further view of Heisman et al.

The arguments in favor of patentability of claims 1 – 7, 10 – 11, 16 – 17, 20, 21, 23 and 25-28 also apply to the rejection of these claims. Reconsideration of the rejection of these claims is requested.

2. Request for Reconsideration and Allowance

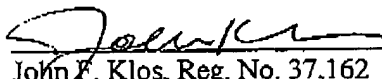
Based upon the above Amendments and Remarks, claims 1-10 and 12-28 are believed to be in proper form for allowance, and patentable over the prior art made of record. Applicant respectfully requests reconsideration of those claims and a prompt Notice of Allowance thereon.

Please direct any questions or comments regarding this application to John F. Klos at (612) 321-2806.

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Respectfully submitted,

The Toro Company,
by its attorneys,


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